

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

ATARI, INC. et al.

Debtor.

Case No. 13-10176-jmp
New York, New York
January 24, 2013
10:39 a.m. - 12:13 p.m.

TRANSCRIPT OF CHAPTER 11 MATTER, CASE 13-10176-JMP
- ATARI, INC., ATARI INTERACTIVE, INC., HUMONGOUS, INC.,
AND CALIFORNIA U.S. HOLDINGS, INC. -

FIRST DAY HEARINGS

(Proposed)
AGENDA

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF
AN ORDER (I) DIRECTING JOINT ADMINISTRATION OF THE CHAPTER II
CASES UNDER FED. R. BANKR.P. 1015(B), (II) WAIVING
REQUIREMENTS OF 11 U.S.C. § 342(C)(L), FED. R. BANKR. P. 1005
AND FED. R. BANKR. P. 2002(N), AND (III) AUTHORIZING THE
DEBTORS TO FILE REQUIRED MONTHLY OPERATING REPORTS ON A
CONSOLIDATED BASIS [DOCKET NO. 2];

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF
AN ORDER GRANTING THE DEBTORS ADDITIONAL TIME WITHIN WHICH TO
FILE SCHEDULES AND STATEMENTS [DOCKET NO. 4];

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF
AN ORDER ESTABLISHING NOTICE AND SERVICE PROCEDURES [DOCKET
NO. 5];

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF
AN ORDER (I) APPROVING THE FORM AND MANNER OF NOTICE OF THE
COMMENCEMENT OF THEIR CHAPTER II CASES, (II) AUTHORIZING THE
DEBTORS TO PREPARE A CONSOLIDATED LIST OF CREDITORS IN LIEU
OF A MAILING MATRIX, AND (III) AUTHORIZING THE DEBTORS TO
FILE A CONSOLIDATED LIST OF TOP 30 UNSECURED CREDITORS
[DOCKET NO. 6];

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF
AN ORDER (I) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING OR DISCONTINUING SERVICES TO, OR DISCRIMINATING
AGAINST, THE DEBTORS ON ACCOUNT OF PREPETITION INVOICES; AND
(II) DETERMINING THAT THE UTILITY COMPANIES ARE ADEQUATELY
ASSURED OF POST PETITION PAYMENT [DOCKET NO. 7]

AGENDA
(cont'd)

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (II) AUTHORIZING CONTINUED USE OF EXISTING BUSINESS FORMS, (III) ACCORDING ADMINISTRATIVE EXPENSE STATUS FOR INTERCOMPANY RECEIVABLES, (IV) WAIVING THE INVESTMENT AND DEPOSIT REQUIREMENTS OF SECTION 345 OF THE BANKRUPTCY CODE, AND (V) GRANTING CERTAIN RELATED RELIEF [DOCKET NO. 8];

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF AN ORDER (I) AUTHORIZING, BUT NOT DIRECTING, PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS; AND (II) AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS [DOCKET NO. 9];

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO MAINTAIN A PREPETITION INSURANCE PREMIUM FINANCE AGREEMENT [DOCKET NO. 10];

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF AN ORDER (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY PREPETITION WAGES, SALARIES AND BENEFITS, (II) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY PREPETITION PAYROLL TAXES, WITHHOLDINGS AND REIMBURSABLE EXPENSES; (III) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO CONTINUE EMPLOYEE BENEFIT PROGRAMS ON A POST PETITION BASIS; AND (IV) AUTHORIZING ALL FINANCIAL INSTITUTIONS TO HONOR ALL RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS [DOCKET NO. 11];

(CORRECTED) MOTION OF DEBTORS AND DEBTORS-IN-POSSESSION PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364 AND 507 AND FED. R. BANKR. P. 2002, 4001 AND 9014 FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO INCUR POST-PETITION SECURED INDEBTEDNESS, (II) GRANTING FIRST PRIORITY PRIMING LIENS AND PROVIDING SUPER PRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING AUTOMATIC STAY, AND (V) SCHEDULING A FINAL HEARING [DOCKET NO. 17]

BEFORE THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE

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1 THE COURT: Be seated, please. Good morning. Mr.
2 Partee, how are you?

3 MR. PARTEE: Good morning, Your Honor. I am exhausted
4 but fine and I first of all want to say, may it please the
5 Court, for the record I am Peter Partee from Hinton & Williams,
6 LLP. To my right is Michael Richman at the counsel table, also
7 with me from Hinton & Williams, LLP.

8 MR. RICHMAN: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. PARTEE: And we are proposed lead counsel for the
11 debtors and debtors-in-possession in these Chapter 11 cases.
12 Your Honor, first and foremost let me say thank you for the
13 indulgences this morning with the additional time. I know that
14 the Court's time is limited this morning and I believe it has
15 borne fruit.

16 What we would like to do, Your Honor, with the Court's
17 permission, is go through a little bit of background leading up
18 to the change in DIP facilities that we effectuated last night.
19 We are effectively going to be changing from Tenor Capital as
20 our DIP lender to Alden Capital as our DIP lender on
21 substantially the same but vastly improved terms.

22 THE COURT: That's good. I'm interested in knowing
23 about that sooner rather than later, so rather than --

24 MR. PARTEE: Understood, Your Honor.

25 THE COURT: -- rather than start in the ordinary way

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1 which is to give me the deep background, of which I think I
2 already know from --

3 MR. PARTEE: Fair enough.

4 THE COURT: -- having read the materials, I'm most
5 interested in knowing what the new DIP terms look like and how
6 they compare and I would also like to have a chance to reflect
7 on them. So, the sooner I have that, the better.

8 MR. PARTEE: Absolutely, Your Honor. And Your Honor
9 to that end, we do have a blackline of changes to the term
10 sheet, as well as a blackline of changes to the interim order
11 and a revised DIP budget to go along with that that we can hand
12 up at this time, if the Court would like to have them to review
13 as I go through the presentation.

14 THE COURT: Sure.

15 MR. PARTEE: We also have additional copies for
16 anybody who might be interested in the courtroom that hasn't
17 already received them with my paralegal on the end. May I
18 approach, Your Honor?

19 THE COURT: Sure.

20 MR. PARTEE: Your Honor to characterize, first and
21 foremost, I think it's important to understand the process by
22 which all this occurred. The company with -- essentially ran
23 into a liquidity crisis and that's explained in the first day
24 declaration commencing in early December therefore. They
25 realized they would no longer be receiving financial support

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1 from their publicly traded French parent and could no longer
2 move money within the consolidated corporate structure as and
3 where needed, as they previously had.

4 Therefore, the Atari U.S. subsidiaries, the four U.S.
5 subsidiaries were caught in a position where they had a finite
6 amount of money with which to find new financing and otherwise
7 solve on a more permanent basis their liquidity issues and those
8 liquidity issues historically had prevented them from fully
9 monetizing the historic gaming franchises that are owned by
10 Atari. So this has been a continuing issue and it became acute
11 only in December when it became apparent no further funds would
12 be flowing from upstream from the French publicly traded parent.

13 As a result, the company went through a fairly
14 significant process, signed NDA's with a number of different DIP
15 lenders, gave due diligence deposits to two; Counsel RB Capital
16 and Tenor Capital, both of which went through due diligence.
17 Counsel RB Capital issued a commitment subject to due diligence
18 but it did not survive due diligence. They did not make a final
19 offer.

20 As a result, the only offer of financing that the
21 debtors had available to them at the time they filed was the
22 Tenor Capital Management DIP. That DIP gave the debtors exactly
23 the flexibility that they requested to effectively spend
24 approximately thirty days in bankruptcy, determining whether
25 there would be a stalking horse bidder for the company's assets

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1 or a plan sponsor, locking them up and commencing that process
2 and then having sufficient funds with which to complete that
3 process, whether it's a plan or a sale.

4 The Tenor Capital DIP on the downside was
5 extraordinarily expensive and that's obvious from the face of
6 it, Your Honor. Multiple different kinds of fees, as well as a
7 contingent back-in exit fee that was a sliding scale of
8 percentages based upon the sale price -- the net sales proceeds.

9 THE COURT: Has that term sheet, which I understand
10 became the model for what you're now going to be presenting with
11 Alden, been withdrawn? Is it no longer an option or is the
12 Alden an alternative to a Tenor transaction which is available
13 if we lead to resort to such extraordinary and offensive terms?

14 MR. PARTEE: Well, understood, Your Honor. I --

15 THE COURT: By the way, it is the single-most horrific
16 term sheet for a DIP I have ever seen, is not market standard,
17 and is something that even if there had been no objections, I
18 would never approve.

19 MR. PARTEE: We suspected that might be the Court's
20 position, Your Honor, and again but for the fact that it was the
21 only game in town --

22 THE COURT: Sometimes as I said to my clerks, rescue
23 financing that looks like this is not rescue financing at all.
24 The patient should die.

25 MR. PARTEE: We understand that, Your Honor. I'm sure

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1 to be candid that the employees at Atari and parties interested
2 in buying their assets substantially as a going concern perhaps
3 would disagree but fortunately, we're not presented with that
4 issue today.

5 THE COURT: Good.

6 MR. PARTEE: So, let's take it off the table.

7 THE COURT: What I would really like to know is if the
8 Alden Global Distressed Opportunities Master Fund and Alden
9 Global Value Recovery Master Fund LP Turnpike, Ltd. --

10 MR. PARTEE: I don't even know the name enough -- well
11 enough, Your Honor. They surfaced last night at about 10
12 o'clock, so --

13 THE COURT: I don't know if that's the right name.
14 I'm just reading the words I'm seeing on a page but I would like
15 to know what the terms are.

16 MR. PARTEE: Yes, Your Honor.

17 THE COURT: And I'm also concerned for notice purposes
18 that parties-in-interest have had an opportunity to examine and
19 react to these revised terms.

20 MR. PARTEE: And, Your Honor, I think when we go
21 through them you'll understand that there probably is no notice
22 issue. It's simply the Tenor DIP with absolutely no fees
23 whatsoever; none. No origination. No commitment. No exit. No
24 takeout, nothing; no fees at all. So, it is a tremendous
25 improvement. It is basically the Tenor DIP. Instead of having

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1 three tranches of two million, one million and a final two
2 million available upon the filing of a sale or plan, it's simply
3 two million up front and three million at final approval
4 availability, subject to a DIP budget with no fees at all. It
5 is the first time in my career we've swung 180 degrees, Your
6 Honor, from perhaps the most expensive DIP that I've ever been
7 presented with to the least expensive DIP that I've ever been
8 presented with.

9 The quid pro quo, Your Honor, you might ask, why in
10 the world would a DIP lender do such a thing? It raises the
11 question of motive; why -- what is their takeaway from this?

12 THE COURT: Perhaps it's a charitable organization.

13 MR. PARTEE: Well, perhaps so, Your Honor. I doubt it
14 for some reason. I have a sneaking suspicion it's not. Your
15 Honor, they are, we understand, considering if they have not
16 already, purchased the Blue Bay secured claim against the parent
17 which is secured or at least purportedly by a pledge of the
18 stock of each of the U.S. subsidiaries and also purportedly
19 secured by a lien on the Test Drive Unlimited Gaming franchise
20 owned by Atari, Inc. And as part of the DIP, they are requiring
21 that the debtor waive any and all rights that the debtor, but
22 not a committee, might have to challenge that lien or any of the
23 collateral related to that lien. That lien purportedly also
24 includes a lien on the intercompany accounts, the unsecured
25 claims purportedly owed by the U.S. subsidiaries to the French

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1 parent.

2 Again, the debtor is being asked, as a quid pro quo
3 for this feeless DIP to effectively delegate its fiduciary duty
4 to challenge those positions and they may or may not be subject
5 to challenge to a committee and to give the committee the
6 standard rights to use proceeds of the DIP up to a cap of I
7 believe it's 50,000 dollars that's been proposed, to investigate
8 those liens, to investigate those positions but not to use the
9 DIP to challenge them and to give them the standard, I believe
10 it's sixty days to perform that investigation and to determine
11 whether to challenge those positions.

12 We felt after the company went through a literally
13 agonizing six to seven hour process of determining whether on
14 the one hand a very expensive Tenor debtor that did not require
15 a delegation of these fiduciary responsibilities to a committee
16 was superior or a feeless DIP that did require the delegation of
17 these responsibilities to a DIP was superior. And we
18 respectfully submit made a good faith business judgment and the
19 right one that the feeless DIP, the least expensive DIP I've
20 ever seen, combined with a standard delegation of responsibility
21 to a committee, the part -- the real fulcrum constituency here,
22 the party on the bubble, to investigate these liens and claims
23 and determine whether there is a challenge available to them.

24 THE COURT: Let me ask you a question in reference to
25 the terms of the Tenor DIP facility and what's been picked up by

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1 Alden as it relates to certain aggressive timing milestones in
2 the bankruptcy case itself. There are some events that were to
3 have taken place on a schedule that I view as anywhere between
4 ambitious to wholly unrealistic and an investigation of liens
5 may or may not be possible, even with a 50,000 budget that to me
6 sounds incredibly lean, in the time that's available if the
7 milestones are still part of the transaction. Have those
8 milestones been retained or modified?

9 MR. PARTEE: They've been modified but retained;
10 retained in concept but with modified numbers, Your Honor.
11 Essentially we have a full 180 day DIP here and so we have a
12 plan that must be consummated within 150 days if we go the plan
13 route. We think that's realistic. 120 is very doable in this
14 case; 150 gives us a little bit of land, yeah, a little bit of
15 leeway.

16 When it comes to a sale process, we have 105 days
17 effectively to get that done and I think that that is a
18 reasonable period of time and I would simply draw, for example,
19 a contrast to the somewhat comparable case of In Re: THQ in
20 Delaware which has received some notoriety about trying to
21 accomplish a sale on a very expedited time frame. We are
22 obviously not pushing for anything remotely close to that here,
23 nor does the DIP require it.

24 THE COURT: Okay.

25 MR. PARTEE: So again -- and, Your Honor, we have, you

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1 know, for example 75 days to get a bidding procedures order
2 entered, as opposed to 45. So, we really feel like we have a
3 full, you know, even, you know, it could be sixty day period to
4 look for a stalking horse if we choose to use a stalking horse.
5 There may be so much appetite in these assets that we don't want
6 to set the market with a stalking horse offer. That is one of
7 the considerations that we're going to be determining over the
8 course of the next thirty days. This DIP gives us substantial
9 additional flexibility to make that determination.

10 The other thing that I am going to draw to the Court's
11 attention that the DIP does, Your Honor, is give us the full
12 flexibility to pursue a plan process because we are the licensee
13 under a lot of licenses of copyrighted intellectual property and
14 as a result, if we do a sale here, we may have to get consents
15 from the licensors. Whereas, under a plan, with just an
16 assumption and no assignment corresponding to that, we probably
17 would not.

18 And so there may be a significant advantage to the
19 plan process or at least knowing that that is an option in
20 negotiating those consents with licensors.

21 So again, this is -- neither the Tenor DIP nor the
22 Alden DIP is something that has gone without a substantial
23 amount of input from the debtor in terms of what the debtor's
24 minimum needs are. Essentially, what Alden has done at our
25 request is to take the Tenor DIP and modify it in ways that are

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1 only beneficial to the debtor with the one glaring exception
2 that I've indicated to the Court previously and that is the
3 waiver or the delegation is the better way to put it, of the
4 fiduciary duties to challenge the insider positions to a
5 committee and then funds under the DIP to investigate -- lean,
6 as the Court characterized them but still there, but without any
7 ability to use the proceeds of the DIP to challenge; a
8 relatively standard bargain struck in this context.

9 THE COURT: What's the status of the Blue Bay claim at
10 this point? Blue Bay through counsel filed objections to both
11 the Tenor DIP, now probably mooted by virtue of the new
12 transaction and also to the putative certain critical vendor
13 claims? Are those objections all mooted? Does Blue Bay
14 continue to have independent standing in the case or has Alden
15 picked up that position as part of their arrangement, presumably
16 to try to acquire this business?

17 MR. PARTEE: I know that I am authorized to -- and Mr.
18 Greissman, who represents Blue Bay is in the courtroom here to
19 my left, to authorize -- to represent that those objections will
20 be withdrawn contingent upon approval of the Alden DIP. I will
21 let Mr. Burns, who represents Alden speak for himself with
22 respect to whether the acquisition of the Blue Bay claim has
23 already occurred. With that, I'll tender the podium.

24 THE COURT: If it has, it's lightening speed but let
25 me find out what's going on.

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1 MR. BURNS: Good morning, Your Honor. Robert Burns,
2 Bracewell & Giuliani. I'm here on behalf of Alden, the proposed
3 DIP lender. I can confirm that my client has acquired the Blue
4 Bay debt that was referenced in the debtor's first day papers,
5 the signature pages for that acquisition were exchanged this
6 morning between the parties here in France. If you have any
7 other questions, I'm happy to answer them, Your Honor.

8 THE COURT: No, that's fine.

9 MR. PARTEE: Thank you. So, Your Honor, lightening
10 speed. Sometimes these things happen that way.

11 I want to take two minutes of the Court's time to make
12 a few comments about Tenor and the role that they played in the
13 case. Tenor -- without Tenor, we would be in a Chapter 7 case
14 and I recognize that the Court thinks that perhaps if that was
15 the only financing available to us, perhaps that would have been
16 the right approach.

17 THE COURT: There was a risk that if you proceeded
18 with the Tenor DIP that there's where you would have ended up.

19 MR. PARTEE: Understood, Your Honor. We would have
20 been there anyway and we would not have had what was effectively
21 a stalking horse for a better DIP without them. And as a result
22 of discussions with the current DIP lender this morning, as well
23 as Tenor who obviously feels relatively aggrieved at where they
24 wound up, the debtor and the DIP lender have agreed to support
25 and we will be filing a motion seeking this relief, to award

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1 Tenor a substantial contribution claim and I can allow, you
2 know, Mr. Burns or the Tenor Capital representatives that are in
3 the courtroom to describe the precise deal that has been struck
4 in that regard. It's obviously subject to this Court's review
5 and approval but I simply wanted to express the debtor's support
6 -- strong support for that substantial contribution claim on the
7 record because I will say again without qualification, we would
8 not have gotten the Alden DIP on the terms that we did without
9 Tenor Capital standing there as a stalking horse on the terms
10 that it had.

11 THE COURT: Okay. This is the first day of a case
12 that we'll have more days to follow.

13 MR. PARTEE: Yes, indeed.

14 THE COURT: We're not sure yet how many. I think it's
15 premature for us to be talking about substantial contribution to
16 a case that is in its infancy and I will simply note without
17 making any comments that should be viewed as indicative on how
18 the Court might rule with respect to this request for
19 substantial contribution, that in the ordinary course of
20 distressed lending in this community, it is a foreseeable
21 outcome that parties who overreach may be exposed to the risk of
22 losing a deal because the deal is simply not market standard.
23 This was not a market standard deal; offensive to the Court in
24 its terms and to ask for substantial contribution for bidding it
25 big is frankly another example of being a pig.

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1 MR. PARTEE: I understand the Court's position, Your
2 Honor, and obviously it is premature to consider the issue and I
3 simply --

4 THE COURT: And I am nothing, if not blunt.

5 MR. PARTEE: This I know, Your Honor.

6 THE COURT: Okay.

7 MR. PARTEE: This I remember. Your Honor, with that,
8 again the terms of the Alden Capital debtor are more lenient in
9 terms of their timelines. They are -- it is a feeless DIP. It
10 is not in any way negative relative to the Tenor DIP in any way,
11 except one and that is the delegation to a committee on the
12 terms that I've described of the right to challenge the Blue Bay
13 and parent positions.

14 Now that is a major give but with a committee around
15 to perform that fiduciary function, we believe it's an
16 appropriate one in this case. And with that, Your Honor, again
17 we have gone through with the United States Trustee the interim
18 order and have resolved all of the U.S. Trustee's comments to
19 the order. It is -- there are some changes to the blackline
20 that the U.S. Trustee requested but otherwise, I believe we have
21 a fully consensual interim DIP and as a result, Your Honor, I
22 can proffer -- obviously, Mr. Robert Mattes, who is the chief
23 financial officer of the company, his testimony in support of this
24 DIP. I can proffer Mr. James Wilson, the CEO who is also in the
25 courtroom, both of whom would testify to everything that I have

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1 represented to the Court this morning about the process by which
2 the Alden DIP was negotiated and obtained and how much more
3 favorable it is to the debtor and its estate -- the debtors and
4 their respective estates than the Tenor Capital.

5 THE COURT: We've taken all of this out of order --

6 MR. PARTEE: Yes, we have.

7 THE COURT: -- and it's because of the importance of
8 this to the case as a whole and the late-breaking development
9 that changed the nature of the hearing from the Court's
10 perspective.

11 MR. PARTEE: Yes.

12 THE COURT: But I think given the importance of the
13 case and its visibility --

14 MR. PARTEE: Certainly.

15 THE COURT: -- its visibility may actually be greater
16 than the importance of the case, that we --

17 MR. PARTEE: That had occurred to me, Your Honor.

18 THE COURT: -- that we give you an opportunity to set
19 the stage that you were trying to do when I interjected and
20 changed the order of play.

21 MR. PARTEE: Fair enough.

22 THE COURT: And so, before we get into offers of proof
23 in support of the DIP, I think we should restart the clock on
24 this and go to the beginning and give you an opportunity to put
25 this all in context. In doing so, I had some particular concern

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1 and it may be misplaced because I don't fully understand the
2 nature of the business dealings between the U.S. entities that
3 are in Chapter 11 and the French parent and the French
4 affiliates.

5 I think it would be of some value for me to have a
6 better understanding, to the extent you can portray that --

7 MR. PARTEE: Certainly.

8 THE COURT: -- as to the prepetition structures at
9 issue here and allay some of my concerns which may be
10 misplaced --

11 MR. PARTEE: Okay.

12 THE COURT: -- that there are issues that may be
13 visited upon this court later in which representatives of
14 foreign creditors may say we're here. We have claims. This was
15 all one business. The structure should be disregarded and
16 whatever is to be distributed should be distributed equally and
17 ratably as if this were just one business.

18 So part of what I am interested in knowing about is
19 the integrity of a capital structure that based upon the first
20 day papers appears to have been one in which funds freely flowed
21 from Europe to the U.S. from the U.S. to Europe and corporate
22 niceties may not have been fully observed.

23 MR. PARTEE: Well, I think we can address that, Your
24 Honor, and I certainly understand the Court's concern in that
25 regard. I think it's on the face of this case for anybody who

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1 reads the first day declaration.

2 So, Your Honor, with that, I will simply give you the
3 background that the Court has requested and that I would have
4 had we not gone right into, appropriately, the DIP issues.

5 Your Honor, the debtors and debtors-in-possession in
6 these Chapter 11 cases are the U.S. subsidiaries, there are four
7 of them, of a publicly traded French parent, Atari SA. The four
8 U.S. subsidiaries are the owners of and the operators of the
9 historic, iconic gaming franchises that go under the brand
10 Atari. These include not only the iconic games that many of us
11 grew up playing; Asteroids, Pong, Centipede, et cetera, but also
12 a number of other franchises that some may not associate with
13 Atari such as the very valuable Backyard Sports franchise, or
14 the Test Drive Unlimited franchise.

15 The debtors monetize these franchises in a number of
16 different ways. Historically, they've done so through retail
17 outlets, although that is a winnowing area of their business and
18 something they're shifting away from, as well as online, mobile
19 and then licensing. Each of those different market segments
20 produces viable cash streams based on games produced out of each
21 of these franchises and new releases and every time there is a
22 new release, there's an uptick in cash and then it winnows down
23 and then there's a new release and then the cash winnows down.

24 Part of what we are in right now is in a position
25 where we're about to release some new games but we have winnowed

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1 down before in the way of cash proceeds from the prior games.
2 That happened at the same time of the situation that I described
3 earlier and that is historically, the companies did keep
4 rigorous intercompany accountings of movements of cash. In
5 fact, there are intercompany loan balances and some of them are
6 accruing interest between the U.S. subsidiaries, a separate
7 account for each one and with Atari SA, the upstream parent, and
8 then some of the European subsidiaries of the upstream parent.

9 There is no problem segregating the company's
10 respective assets and liabilities. That is not the issue.
11 Functionally, as in the case with many companies, they were an
12 integrated, happy family and if there was a need for money in
13 Atari Europe and Atari Interactive had that cash, there would be
14 an intercompany loan booked to that company to effectively, you
15 know, pay the debt and/or vice versa. So, in other words, they
16 kept rigorous accounting of where the cash flowed but where cash
17 was needed, that's where cash went. And sometimes it would be
18 flowing downstream and sometimes it would be flowing upstream.

19 In the most recent months, there was -- it was not
20 flowing anywhere. In the beginning of December, the companies I
21 think realized that they were maybe not insolvent but an
22 insolvency or near insolvency related positions and I think
23 everybody realized, all the officers and directors, realized
24 that it was no longer feasible from a fiduciary prospective to
25 move cash beyond where it sat at that moment. Essentially,

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1 there was a cash freeze instituted.

2 That left the U.S. subsidiaries where all the
3 operations really are located and where all the valuable and
4 most of the intellectual property is owned, certainly the
5 historic stuff, without enough cash to continue for a period of
6 more than approximately six to eight weeks. We projected that
7 we would make it to the middle of January without some form of
8 bridge financing and without some form of DIP.

9 The company then engaged in the search for DIP
10 financing or bridge financing by making inquiries with a number
11 of different lenders. The issues presented were, Your Honor, as
12 the Court understands, this was a small loan. We were
13 requesting five to ten million dollars in the form of a loan and
14 we -- you know, were in a lull cash-wise and were in a
15 distressed situation and as a result, not surprisingly, the
16 lenders we spoke to were universal in saying they would only be
17 willing to lend on a debtor-in-possession financing basis. And
18 only as a bridge to either a sale or some of them were willing
19 to do so via a plan and then only after due diligence.

20 And as each of Mr. Mattes and Mr. Wilson would testify
21 if called, (a) everything I've just said is correct and (b) they
22 engaged in this process in good faith but did not have
23 sufficient funds to give more than a couple of the most
24 promising lenders, due diligence deposits. If we had given
25 everybody due diligence deposits to do what they wanted to do,

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1 we would have been out of cash that day.

2 So we chose the two most promising lenders and that
3 was Counsel RB Capital and Tenor Capital to do significant due
4 diligence. We also at the same time were negotiating with a
5 particular strategic potential investor, one who believed that
6 they would and had expressed a desire to provide both DIP
7 financing, as well as be the stalking horse bidder, a typical
8 bargain. And with a strategic fit, it seemed like a wonderful
9 thing. So, simultaneously while we were in negotiations with
10 the strategic, the two DIP lenders were doing their due
11 diligence; one called in FTI to do their due diligence, one
12 called in Sherwood Partners, well-recognized financial advisory
13 firms to do significant due diligence.

14 One week before bankruptcy, the strategic potential
15 investor DIP lender walked away from both potential positions.
16 They said they did not want to provide the DIP financing and
17 even if someone else provided the DIP financing, they did not
18 want to be the stalking horse lender.

19 This left us in a bit of a lurch and only having two
20 DIP lenders spending their due diligence, trying to play one off
21 the other in order to get the best deal. Unfortunately, Counsel
22 RB Capital who had issued the commitment earlier, subject to due
23 diligence, ultimately did not make a binding proposal based on
24 the results of their due diligence. We were surprised and
25 unpleasantly so by that result.

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1 As a result, we were left with negotiating with Tenor
2 and shockingly enough, what we wound up with, with Tenor was not
3 the initial ask. We did actually make some progress negotiating
4 them downward to reach the DIP facility that we filed. But it
5 was something that gave us the flexibility, which not too many
6 other lenders that we had spoken with gave us, to spend up to
7 thirty days or so in bankruptcy, trying to identify a stalking
8 horse lender, rather than simply commencing an immediate naked
9 auction.

10 As a result, the -- as Mr. Mattes in particular would
11 testify and as recounted in this first day declaration, the
12 company concluded that the tenor DIP was the only appropriate
13 route to follow. It was the only game in town and that the
14 authorization to me was negotiate as best we can but get it,
15 cinch it, pay the commitment fee and get it done. We didn't
16 have any money with which to pay the commitment fee, so they had
17 to accrue their commitment fee. That was a negotiation.

18 It was done. We did accrue the commitment fee by
19 signing the commitment outside of bankruptcy, Your Honor, and
20 that was 250,000 dollars, which is part of what relates to our
21 substantial contribution discussion earlier.

22 That being said, we proceeded into bankruptcy after
23 having received the, not only board votes in favor of the
24 filings and the Tenor DIP but also a shareholder resolution to
25 that effect. So, we had the full support of the corporate

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1 parent for doing what we were doing. There were lots of last
2 second efforts to provide -- to obtain money at the French
3 parent company level, so as to forgive the colloquialism, drip
4 some down to the U.S. subsidiaries in a manner that would stave
5 off the necessity of filing for bankruptcy. Those simply did
6 not come to fruition in sufficient time.

7 What is the compelling time? We have payroll that we
8 have to fund no later than Monday, Your Honor and we lack
9 sufficient funds with which to do so. That is the urgency, as
10 Mr. Mattes will testify if called, for funding the DIP. We
11 would need up to the two million dollar mark for a six week
12 period. If we go to a final hearing within two to three weeks,
13 we can live on 1.4 to 1.5 million of an initial interim
14 facility. And we can have Mr. Mattes correspond that to the DIP
15 budget that we proposed but that's essentially what it provides.
16 I'm summarizing for the sake of expediency.

17 With that interim draw, Your Honor, we would be able
18 to both fund our payroll; get to a final hearing; as well as
19 make the critical vendor payments to which there is now no
20 objection from Blue Bay, as a result of taking the Alden DIP.
21 And obviously, we'll get to that motion. Mr. Richman will
22 handle the proffer of evidence when it comes to that because we
23 understand the sensitivity, of course. On that note, I will say
24 I absolutely detest critical vendor trade motions and I think
25 they're the enaphthma^{34:20} of the Bankruptcy Code but in this

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1 case, we were compelled to move for that relief here, simply
2 because of the importance of those vendors and the role that
3 they play in the value of the company's games. Again, Mr.
4 Richman will elaborate on that when we get to that point in the
5 presentation, Your Honor.

6 THE COURT: We'll get to that in just a little bit. I
7 still have some more questions that relate to the French parent
8 and also to how that enterprise is being managed at this point,
9 if there is a bankruptcy trustee --

10 MR. PARTEE: There is not, Your Honor. There's not.
11 My --

12 THE COURT: Let me just ask a couple of questions.

13 MR. PARTEE: Certainly.

14 THE COURT: Under the arrangements with Tenor, and it
15 may be that these were not imposed by Tenor but simply part of
16 the debtors own bankruptcy planning, I understood that officers
17 that had been common to the French parent and the U.S.
18 subsidiaries were going to resign their positions in France,
19 leaving, it seemed to me, the French parent without leadership.
20 Is there anybody leading the French parent at the moment?

21 MR. PARTEE: Yes, Your Honor. First and foremost, the
22 only resignation that has occurred -- they were trached; the
23 chief financial officer, Robert Mattes, who actually was --
24 there was never an official appointment of him being the CFO of
25 the French parent but certainly performed that function has

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1 resigned whatever position he may have had functionally or
2 otherwise with the French parent.

3 THE COURT: By the way, that's just one of those facts
4 that doesn't help me very much --

5 MR. PARTEE: I understand.

6 THE COURT: -- when it comes to dealing with --

7 MR. PARTEE: I understand that.

8 THE COURT: -- the European creditors.

9 MR. PARTEE: But it is what it is, Your Honor, and I
10 want to be candid about the facts.

11 THE COURT: I understand.

12 MR. PARTEE: But there is a controller that has been
13 placed into the CFO position in France. Again, the French
14 parent company doesn't have -- it is a holding company. It does
15 not have the kinds of operations on a day-to-day basis. It does
16 not attempt to monetize games and market them and have an
17 ongoing day-to-day business in the way that the U.S.
18 subsidiaries do. I'm sorry if that was not clear.

19 THE COURT: There are French operating subsidiaries,
20 are there not?

21 MR. PARTEE: There are French -- I believe there's one
22 Atari Europe SA and then there's something called Eden. There
23 are a couple of different subsidiaries that are operating but
24 they have their own kind of sub-management groups.

25 THE COURT: Okay. So, just to get to it, what's

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1 happening in France? Who is running the show?

2 MR. PARTEE: And, Your Honor, right now Mr. Wilson,
3 Jim Wilson, is both the CEO of the U.S. subsidiaries, as well as
4 the French parent, although the contemplation is that a CRO will
5 be appointed and -- before the final hearing of the DIP in this
6 case and that at that point, Mr. Wilson will resign if that
7 doesn't occur earlier from that position.

8 THE COURT: Just so the record is clear on this and so
9 that I am clear on this --

10 MR. PARTEE: Yes.

11 THE COURT: -- he'll resign from which position --

12 MR. PARTEE: I'm sorry.

13 THE COURT: -- and the CRO will be appointed in which
14 case?

15 MR. PARTEE: In the -- he will resign from his
16 position with the French parent.

17 THE COURT: And the CRO will be appointed in France?

18 MR. PARTEE: A CRO will appointed in France to take
19 the position --

20 THE COURT: I have no idea, what's French for CRO?

21 MR. PARTEE: My apologies, Your Honor, chief
22 restructuring officer.

23 THE COURT: No, I understand that. I didn't know that
24 that --

25 MR. PARTEE: Au francais.

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1 THE COURT: -- that function actually existed in
2 French bankruptcy.

3 MR. PARTEE: You know, Your Honor, it's simply
4 somebody to come in and run the company during its process but I
5 don't know that there is a formal title in that respect but that
6 is the way it's being described to me. And with that, Your
7 Honor, I mean, Mr. Ken Coleman, from Allen & Overy is here in
8 the courtroom, represents the parent and he may be much better
9 versed than I on these matters.

10 THE COURT: I suspect he may be.

11 MR. COLEMAN: Good morning, Your Honor. Ken Coleman
12 of Allen & Overy. And sorry to disappoint you, Your Honor, I'm
13 not that much better versed. We haven't been involved for very
14 long in this process. We represent Atari SA, the publicly
15 traded French company and Atari Europe SAS. We've been involved
16 for less than a week. I think Mr. Partee parties know a bit
17 more about what's been happening since his involvement predates
18 ours by some months.

19 What I do know is that Atari SA and Europe SAS have
20 filed applications for safeguard proceedings in Paris. That
21 does not constitute the commencement of a case as we would know
22 it or as Your Honor would know it from other foreign proceedings
23 that you've had here. The commencement would occur after the
24 entry of an order by the Court in Paris. There was a hearing
25 scheduled for Monday of this week that was adjourned until I

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1 believe Monday of next week and I'm not quite sure what is going
2 to happen today and tomorrow with respect to that. So, the
3 company in France or the companies in France are still in that
4 period known conciliation. There's a conciliator that has been
5 appointed that interfaces with the company and creditors in an
6 effort to reach some kind of arrangement. That has not
7 occurred. You know, there's been no plan as of yet.

8 As far as leadership of the company, Mr. Partee is
9 correct that the CEO is still on board at the parent company, as
10 well as in the U.S. It is expected that he will resign in
11 France and there's a search underway for someone to replace him
12 that role in France. I don't know that somebody has been
13 selected finally for that position but it is something that is
14 being dealt with as we speak in Paris.

15 THE COURT: And that individual, once identified and
16 assuming such an individual is engaged, will then become your
17 client --

18 MR. COLEMAN: Would then become --

19 THE COURT: -- your client contact --

20 MR. COLEMAN: Would then become the officer of our
21 client; correct.

22 THE COURT: And while it may be premature to get into
23 this, is it contemplated that the French proceeding, assuming it
24 is -- it ripens into a full French insolvency case, will be the
25 basis for commencing a Chapter 15 case here?

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1 MR. COLEMAN: It's entirely possible, Your Honor.

2 THE COURT: And --

3 MR. COLEMAN: This is -- this whole thing has been
4 sort of a bankruptcy version of Pong in a lot of ways, you know,
5 at least from where we've been sitting. You know, who is
6 providing the DIP? We don't know. You know, who is in charge
7 here? We don't know. So, it's been evolving at a fairly rapid
8 clip.

9 So, I don't want to make representations to this court
10 that I am not entirely comfortable with, so Chapter 15 has been
11 discussed but until we actually file it before Your Honor --

12 THE COURT: Understood and I'm not asking you to make
13 representations as to what may not happen. I'm simply asking
14 whether or not that's something that might happen.

15 MR. COLEMAN: It may well, Your Honor, and to be
16 perfectly candid with Your Honor as we always try to do, it has
17 been discussed at length.

18 THE COURT: Okay. Now to get to what's really
19 bothering me about this and why I raised the issue in the first
20 place, I'm trying to get a sense and it may be premature to
21 derive any such sense, as to whether the French entity is friend
22 or foe in a U.S. proceeding. I'm trying to get a sense as to
23 whether French creditors through a foreign representative
24 perhaps, might be taking positions with respect to distribution
25 rights in this case or whether or not they'll simply be watching

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1 from Paris.

2 MR. COLEMAN: I understand. I heard Your Honor's
3 question loud and clear earlier. I don't really know the answer
4 to that. I do know that the French company and I think Mr.
5 Partee's description was in very broad terms, accurate. The
6 French parent has supported the subsidiary in a fashion that I
7 believe to be common to many corporate groups over the years.
8 They have substantial claims, intercompany claims. We believe,
9 because there's a UCC-1 on file that at least a portion of those
10 claims are secured claims. We did read in the cash management
11 order and, you know, we're looking at this in a lot of ways as
12 strangers to the situation as much as Your Honor is and some of
13 the other parties here, the -- you know, statements to the
14 effect that there are complex intercompany transactions, cash
15 moving throughout the network.

16 We have had some difficulty, given the activity that's
17 been taking place in France in terms of the safeguard
18 proceedings and the conciliation and really efforts to sure up
19 the parent's financings through third-parties, that we have not
20 been able to get our hands around necessary documents for us to
21 -- as Allen & Overy, to form a view on some of the issues that
22 are concerning Your Honor.

23 So, I don't know, is the answer to your question,
24 whether creditors elsewhere think this is a single enterprise
25 and therefore, they're entitled to assert claims in this

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1 proceeding.

2 The parent being a public company, does file publicly,
3 financial statements. There is in that respect a publicly
4 available delineation between the French and other entities and
5 the U.S. operations. Atari in the U.S. has a history that
6 predates French involvement. And those are just sort of public
7 facts that are out there. What they distill to ultimately, we
8 don't have an answer to that just yet, I am sorry to say.

9 THE COURT: It's helpful. Thanks for the summary.

10 MR. COLEMAN: Okay. You're welcome.

11 MR. PARTEE: Your Honor, in terms of the friend or foe
12 question, which I think is the first and foremost concerning
13 driving the Court's questioning here, one of the advantages of
14 the Alden DIP is that it obviously resolves the hostilities with
15 Blue Bay and just to be clear, Blue Bay is the parent's secured
16 creditor and purports to have a lien on all of the shares of the
17 U.S. subsidiaries, all the common stock, as well as the Test
18 Drive Unlimited franchise owned by Atari, Inc.

19 By virtue of resolving the hostilities with Blue Bay,
20 we may very well have resolved any potential hostilities with
21 the French parent again, because Blue Bay holds this -- I think
22 it's a 21 million dollar -- excuse me, 21 million Euro claim
23 against the French parent, secured by its lien on these shares
24 and punitive lien on the Test Drive Unlimited franchise and that
25 facility is in default, albeit it they've I think put it in a

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1 forbearance period.

2 So again, it may be that the real party-in-interest
3 perhaps used to be the parent company but is really now Blue
4 Bay, as a result of their secured position and again, we've
5 tried to through the current Alden DIP, chip away at that
6 potential expense creating hostility by choosing the Alden DIP.
7 Now creditors clearly are going to have a say about all of that
8 as well but again, we felt like it was an unnecessary level of
9 hostility and contentiousness in this case that we were able to
10 take away and we may have eliminated it vis-a-vis the parent is
11 the point, as well --

12 THE COURT: Okay.

13 MR. PARTEE: -- as a result of Blue Bay's claim.

14 THE COURT: Well, I think we've probably dealt with my
15 international concerns enough at this point but I do have a
16 question about anticipated professional engagements and when
17 those are likely to occur.

18 MR. PARTEE: Yes.

19 THE COURT: And my understanding was that under the
20 Tenor DIP there was a requirement that an investment banker be
21 engaged within I think five days.

22 MR. PARTEE: Yes.

23 THE COURT: I assume that some professional support
24 will be required to market the assets and maximizes value and
25 that someone or some firm has been identified and not yet

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1 revealed.

2 MR. PARTEE: We are conducting our interviews this
3 afternoon of the two finalists, Your Honor. FTI is one and Duff
4 & Phelps is the other. And we believe both have the media savvy
5 and expertise necessary to do the work, the rolodex, as it were.
6 And, you know, again we're going to be conducting interview.

7 Now we did, as the Court knows, just last night lock
8 up a new DIP lender and they may have a say about someone else
9 they would like us to interview and we have not yet had that
10 discussion honestly.

11 THE COURT: Sure. So, I assume this is going to be on
12 a fast track.

13 MR. PARTEE: Yes, indeed.

14 THE COURT: Is the five-day requirement still part of
15 the deal?

16 MR. PARTEE: I mean, it is, Your Honor, but I think
17 that's simply because Alden adopted the form of Tenor DIP and I
18 suspect Mr. Burns would represent on the record that, in fact,
19 that five business day period is not necessarily part of the DIP
20 if we don't want it to be but I will leave that to him.

21 THE COURT: And can we also confirm just because it's
22 I know, an important hot button issue, that the lien on
23 avoidance actions that have been part of the Tenor DIP is no
24 longer part of the DIP?

25 MR. PARTEE: Well, I will let Mr. Burns speak to that.

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1 MR. BURNS: Thank you, Your Honor. On the first
2 point, Your Honor, the five-day, I believe is still in there in
3 terms of the requirement to retain an investment banker. That
4 is not sacrosanct by any sense. It was really meant to I think
5 indicate that we do want this to move forward quickly. We're
6 happy to modify that but we'll certainly be working with the
7 debtors on that.

8 Your Honor, I am going to -- if you could allow me
9 just to take a look at the order, I believe under the interim
10 order as it relates to liens on avoidance actions that is not a
11 lien from the interim period to the entry of a final order but I
12 would like to confirm that. We were working on this very late
13 last night and my partner, Mr. Schulter --

14 THE COURT: Okay.

15 MR. BURNS: So --

16 THE COURT: Thank you.

17 MR. BURNS: -- thank you, Your Honor.

18 MR. PARTEE: And, Your Honor, I just -- I don't know
19 whether they're going to press the avoidance action issue at the
20 final hearing but for the interim hearing, it's not on the
21 table.

22 THE COURT: Okay. So that's a fight for another
23 day --

24 MR. PARTEE: Precisely.

25 THE COURT: -- if it's a fight at all.

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1 MR. PARTEE: Precisely.

2 THE COURT: Okay.

3 MR. PARTEE: So, with that, Your Honor, again I'll
4 simply re-proffer the testimony of Mr. Rob Mattes who is now the
5 CFO of the U.S. subsidiaries with respect to the representations
6 made by me here to the Court today. He will --

7 THE COURT: So, just so it's clear, Mr. Mattes has
8 already submitted a declaration in support of first day motions
9 including the original Tenor DIP.

10 MR. PARTEE: Correct.

11 THE COURT: And your proffer is to supplement that
12 declaration through testimony he would otherwise offer as a live
13 witness here today to indicate that what you've represented with
14 respect to the Alden DIP, in fact, would be his own testimony,
15 were he needed to be called as a witness.

16 MR. PARTEE: Correct. If called, he would testify to
17 what I have represented, perhaps in not exactly the same words
18 but the concepts and the meaning would be the same.

19 THE COURT: Okay. Is there any objection to my taking
20 Mr. Partee's representations of what Mr. Mattes would otherwise
21 have said as the functional equivalent of testimony in support
22 of today's DIP?

23 MR. MORRISSEY: Good morning, Your Honor. Richard
24 Morrissey for the U.S. Trustee. The U.S. Trustee has no
25 objection. I just wanted to point out as just a purely

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1 technical matter, that there's no actual motion accompanying the
2 new DIP. There is a motion for the Alden DIP but again, that's
3 a purely technical matter. The U.S. Trustee has no objection to
4 the idea of a proffer in lieu of a new declaration for the first
5 day.

6 THE COURT: All right. I'm going to treat the events
7 of the last -- I'm not sure how many hours -- let's call them
8 twelve hours --

9 MR. PARTEE: Twelve, yes.

10 THE COURT: -- as sufficient cause to modify the
11 currently filed and noticed motion to approve the Tenor DIP as
12 functionally equivalent to a restated motion to approve the
13 improved Alden DIP and would find that there is no need to file
14 an amended motion for these purposes because the record today
15 speaks for itself. The motion for DIP approval now only relates
16 to Alden and no longer relates to Tenor.

17 MR. PARTEE: Correct, Your Honor, just for the record.

18 THE COURT: All right. There's no objection to the
19 proffer. The proffer is accepted. Is there any other proffer?

20 MR. PARTEE: Not with respect to the interim DIP
21 borrowing request, Your Honor. Again, we do need to tender Your
22 Honor a revised order that incorporates Mr. Morrissey's comments
23 and we will work to do so before we leave the courtroom today.

24 THE COURT: Okay. Now there are any number of people
25 in the courtroom. Are there any parties who wish to be heard

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1 with respect to the DIP facility?

2 MR. GREISSMAN: Good morning, Your Honor. Scott
3 Greissman, White & Case. The representation made earlier that
4 the Blue Bay interests have been transferred to Alden are
5 generally correct. The documents have been signed. The
6 transaction has not yet closed. It should close in the next day
7 or so. So, hopefully, you won't be seeing me again but there
8 is, I guess some chance that if the deal doesn't close, I can't
9 imagine why that would be, but I just wanted to clarify the
10 representation made on the record in that regard.

11 And as far as the order is concerned, as a result of
12 the transaction not closing, we requested and the debtor's
13 agreed to as did the Bracewell firm that we could have an
14 opportunity this afternoon just to review it make sure if there
15 was anything problematic in it, we could alert them to any
16 changes and then the order would be filed.

17 THE COURT: Okay.

18 MR. GREISSMAN: Thank you.

19 THE COURT: Fine.

20 MR. COLEMAN: Your Honor, Ken Coleman, Allen & Overy.
21 Likewise with respect to the order, we've had a chance to look
22 through it a bit this morning. We would like an opportunity
23 after the hearing to do so. We noted just a couple of things in
24 terms of the identity of the French entities referenced in the
25 order. Atari Europe SAS should be named in there as one of the

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1 French affiliates.

2 The amounts stated, I think are roughly correct,
3 although they need to be allocated between the two entities. I
4 think, you know, important but not critical changes to the
5 order. We would like an opportunity to look at it and provide
6 comments to the company and the DIP lender.

7 THE COURT: Okay.

8 MR. COLEMAN: Thank you.

9 THE COURT: I'm confident that everybody who requests
10 will have an opportunity to review the order.

11 MR. PARTEE: We will make it so, Your Honor.

12 MR. COLEMAN: Fine.

13 MR. MORRISSEY: Your Honor, once again, Richard
14 Morrissey for the U.S. Trustee. I don't know if the Court wants
15 to hear the comments that we had but since they're -- it's not
16 necessarily from my perspective because the debtor has agreed to
17 make the changes that I've requested.

18 My question for the Court though is it's all together
19 possible that the Court itself upon reviewing the documents, may
20 have its own comments to make and just procedurally, how -- what
21 I am guess I am asking is how would the Court like to handle
22 that in terms of exchanging that information among the parties?

23 THE COURT: I'm not understanding you, Mr. Morrissey.
24 I assume that the parties will work out the form of order that
25 includes to the extent you're able to agree, all of your

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1 comments and I'll be receiving as I often do, an agreed form of
2 order. I will either enter the agreed form of order in that
3 form or if I have tweaks of my own, I'll make those tweaks and
4 once I enter the order, that's it. And if it's not an order
5 that the lender is prepared to lend under, that's too bad.

6 MR. MORRISSEY: Okay. Very well, Your Honor. Thank
7 you.

8 THE COURT: By the way, I've never had a problem.
9 I've never had an order in the form that I have chosen to enter
10 it not be deemed acceptable by the lender.

11 MR. PARTEE: Funny how that works, isn't it, Your
12 Honor? Your Honor, with that, we would conclude our
13 presentation with respect to the interim DIP order and
14 respectfully request entry of the order that we tender later
15 today after an opportunity to solicit comments from all
16 interested parties.

17 THE COURT: That's fine. This is, to say the least,
18 an unusual procedure. The DIP as modified in accordance with
19 the representations made on the record is approved subject to
20 language to be agreed upon and ultimately approved by me.

21 MR. PARTEE: Thank you very much, Your Honor, and with
22 that, I'll tender the podium to Mr. Richman who will handle the
23 balance of the agenda.

24 THE COURT: Fine.

25 MR. PARTEE: Thank you.

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1 THE COURT: Thank you very much, Mr. Partee.

2 MR. PARTEE: Thank you very much.

3 MR. RICHMAN: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. RICHMAN: Michael Richman, Hinton & Williams,
6 proposed counsel for the debtors. Your Honor, if it's
7 convenient for the Court, I'll just follow the order of the
8 agenda without --

9 THE COURT: That would be fine.

10 MR. RICHMAN: Okay. The first motion on the agenda
11 for today is a standard motion for joint administration, Your
12 Honor. I would proffer paragraphs 29 to 32 of Mr. Mattes' first
13 day declaration for relevant facts in support. We did agree in
14 response to a request from Mr. Morrissey that while we propose
15 to file consolidated operating reports that disbursement reports
16 would be broken out separately.

17 THE COURT: Mr. Morrissey, is it acceptable?

18 MR. MORRISSEY: Yes, it is, Your Honor.

19 THE COURT: Joint administration is approved.

20 MR. RICHMAN: Thank you, Your Honor. The second item
21 on the agenda is the debtor's motion for an order to grant
22 additional time to file schedules. We're asking only for thirty
23 days beyond the normal fourteen days provided by the rule, Your
24 Honor, so that we can try to sort through and deal with the
25 complexities of the records with all the other case pressures

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1 that we have and I would request that that be approved and also
2 just for the record, Mr. Mattes' declaration, paragraphs 40 to
3 42 speaks to that.

4 THE COURT: Is there any objection to that? I hear
5 nothing. It's approved.

6 MR. RICHMAN: Thank you, Your Honor. The next motion,
7 number 3 on the agenda, is for the entry of an order to
8 establish notice and service procedures. Paragraphs 33 to 35 of
9 Mr. Mattes' declaration, I would proffer in support. This again
10 is what I would characterize as a standard motion in this
11 district to create a core service list and a master service list
12 of all parties who have requested notice and to authorize the
13 normal e-filing and e-service procedures, Your Honor. And I
14 would ask that that be approved.

15 THE COURT: Mr. Morrissey, is there any issue?

16 MR. MORRISSEY: No issue, Your Honor.

17 THE COURT: It's approved.

18 MR. RICHMAN: Thank you, Your Honor. Number 4 on the
19 agenda is another standard first day motion. In order to have a
20 consolidated list of creditors using the debtor's electronic
21 information, rather than conforming strictly to the matrix
22 requirements of the rules, and to authorize the filing of a
23 consolidated list of top thirty creditors, paragraphs 36 to 39
24 of Mr. Mattes' declaration addressed this. We also have set
25 forth proposed notice and hard copy and certain special cases

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1 which again is standard, including things like plan of
2 disclosure statement and first meeting of creditors and we've
3 reviewed that with Mr. Morrissey. I don't believe there was any
4 objection.

5 MR. MORRISSEY: That's correct, Your Honor. There's
6 no objection but this is where the issue that the Court raised
7 earlier about perhaps some European creditors coming to the fork
8 come in. This is the debtor's representation as to who the top
9 thirty creditors are. And hopefully that list will not be
10 amended as we are in the process of soliciting for a committee.
11 But no objection to the relief sought.

12 MR. RICHMAN: Well, Your Honor, I can represent that
13 in putting the list of creditors together, the U.S. debtors
14 referred to their records and claims against those entities. If
15 there are French creditors who assert on the basis of claims
16 against French entities that they have claims against U.S.
17 entities, that probably would have to be dealt with through a
18 motion.

19 THE COURT: I don't need to deal with that particular
20 issue on this procedural motion and the motion is approved.

21 MR. RICHMAN: Thank you, Your Honor. Item 5 on the
22 agenda is a motion to provide adequate assurance to utilities
23 and prevent them from discontinuing service. Mr. Mattes'
24 declaration, paragraphs 55 to 58 addresses those issues in the
25 nature of the need for relief.

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1 It is interesting in this case that the kinds of
2 utilities that we usually see, electricity, gas and things like
3 that are all part of a triple net lease, so they're not even on
4 our list. Instead, our critical vendors are internet service
5 providers and telephone service providers and the nature of the
6 business platform which is operated primarily out of New York is
7 such that if there were any interruption in those services, it
8 could cause huge damage to the business, given the internet base
9 that is used for so much of it.

10 And we have attached to the motion a proposal that
11 parties wanting adequate assurance can come and ask for a
12 deposit equivalent to what is reasonably expected for two weeks
13 of service and they have thirty days to request that in writing.
14 If they do request that, we will provide the deposit. We have
15 the funds under the DIP if the DIP is approved to be able to do
16 that. And that will be deemed adequate assurance. Parties who
17 default or choose not to ask for adequate assurance within
18 thirty days will also be deemed to have been adequately assured
19 under the terms of the order. And so, Your Honor, I would ask
20 that that be approved as well.

21 THE COURT: Any issues?

22 MR. MORRISSEY: Your Honor, generally, and Mr. Richman
23 and I had discussed this not today but earlier, it's not heard
24 on the first day of the case. Mr. Richman said that this is a
25 special case because apparently someone has come calling on it.

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1 Usually what we recommend in a case like that is that
2 money be held in escrow for the benefit of that person to give
3 special assurance but the notion that it's not generally a first
4 day hearing is not a U.S. Trustee issue, it's more a court issue
5 and if the Court is willing to go forward with that today, the
6 U.S. Trustee has no objection.

7 THE COURT: The part that I heard was no objection.
8 It's approved.

9 MR. RICHMAN: Thank you, Your Honor. Item 6 on the
10 agenda is a motion for approval of the debtor's existing cash
11 management system. Mr. Mattes' declaration, paragraphs 48 to 54
12 describes the system and Mr. Partee also addressed and provided
13 a number of relevant facts in response to Your Honor's questions
14 earlier. I think the important point for purposes of this
15 motion and what we're asking the Court to allow us to continue
16 is that since early December, the accounts have been kept
17 strictly within the United States with a box around them, with
18 strict accounting to make sure that there isn't any movement
19 across borders and that that can all be tracked and we're asking
20 for that to be continued.

21 And the one change we did make from the order that was
22 submitted to Your Honor is we have agreed with the U.S. Trustee
23 that we will stamp debtor-in-possession or DIP on our checks.
24 We had asked for relief from that but we have withdrawn that
25 request. So, I would ask with that, that Your Honor -- we've

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1 also, I should make one other clarification, we decided after
2 discussion with the U.S. Trustee that we did not ask for a
3 waiver from Section 345 because what we were doing was in
4 compliance and we weren't -- we didn't want to suggest or imply
5 that we were trying prospectively to go around 345 or otherwise
6 get a waiver, so we've also withdrawn that request for a motion.
7 So with those changes, I would ask that that motion also be
8 approved, Your Honor.

9 THE COURT: It's approved.

10 MR. RICHMAN: Thank you, Your Honor. Item number 7 on
11 the agenda is the motion to pay certain critical vendors. Mr.
12 Mattes has addressed this in his declaration which I proffer at
13 paragraph 64 to 68. There are, Your Honor, if I can describe
14 it, four different categories of parties that we are proposing
15 to pay under this motion. There are game developers. There's
16 American Express. There's a warehouse that has a lien and is a
17 secured creditor and then there was a licensor, one of the most
18 valuable games that we have and that we make significant money
19 from.

20 It is not all the developers. What we did was and I'm
21 going to describe this in a little more detail, we -- the
22 company's management had the greatest concern about business
23 interruption from small developers and foreign developers. In
24 the case of relatively small developers, their work for Atari is
25 probably the only work they do. And if they aren't paid, then

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1 they will go and take their skills to some other game platform.
2 The gaming development is planned far in advance of release date
3 and this is the lifeblood in the video game industry because
4 you just don't put out a game. You have to put out version 2
5 and then you put out version 3 and every time you put out a new
6 version, which hopefully has improved over the old one, you
7 capture new sales from all the people who loved version 1 and
8 version 2 and then you pick up new customers.

9 So, it's very, very important in the company's
10 ordinary course of business to keep that development business
11 into the supply chain and into the product chain going and the
12 damage -- if we have a developer of one of our major games walk
13 because they don't understand United States law or because they
14 are small and they can't afford to go without the payment and
15 the payments by and large to each of the individuals is not
16 tremendous but if they walk, then we can't -- there isn't
17 somebody that we can just open the yellow pages and find a
18 replacement developer for. These are almost like utilities in a
19 sense. They are really unique and when you find somebody who is
20 good and they're locked into your system, you don't want to lose
21 them.

22 So, that's why the developers are so important and
23 management's opinion was that the developers that are on the
24 list that is part of the motion would be likely to leave and
25 take their services elsewhere and that this could cause

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1 significant damage to the business and particularly to the value
2 of the games that are licensed and in the market. Improvements
3 on several of the games are already in the works. I believe
4 that's in the first day declaration.

5 The warehouse lien, the warehouse in particular, has a
6 lot of our inventory and product and we can't afford to get
7 involved in lift stay litigation with them over their lien and
8 we don't think there are any issues with their liens. So we
9 just propose to pay them to make sure that there's no
10 interruption in shipments and product flow through that
11 warehouse.

12 In the case of American Express, we don't believe that
13 we can compel American Express to continue to provide their
14 services if they aren't paid and they aren't only significant in
15 the sense that there's a particular employee who -- employees
16 have American Express cards and then they become -- they get
17 reimbursed by the company when they incur expenses. So if the
18 card services are cut off and we can't pay them, those employees
19 could be liable.

20 In addition to that, we have a number of significant
21 parties that we do business with who will only take payment
22 through American Express. They won't accept checks. They won't
23 accept other forms of payments. So if we don't pay the American
24 Express bill again, that could lead and management was concerned
25 that that could lead to not only negative impact on certain

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1 employees but to business interruption which could damage the
2 brand.

3 Lastly, in the critical vendor motion, there's a
4 licensor, Chris Sawyer (ph.), who is I guess the mastermind
5 behind Roller Coaster Tycoon which may be the most valuable
6 franchise of Atari and this is a license -- and by the way, I
7 should mention in the case of all the developers, many of them
8 are operating under executory contracts that most likely we
9 would assume in any event. So, these critical vendor payments
10 would be paid in any event as cures when we get to the point of
11 assuming them.

12 Same is true for Chris Sawyer. There's no question
13 that we would assume the Roller Coaster Tycoon license, given
14 its value and its conceivable that any purchaser wouldn't also
15 wish to have that contract assumed. And we can't afford to have
16 him walk and -- or interrupt the support of that gaming
17 platform. It's very, very valuable to us.

18 So that's the -- that is both my summary and proffer
19 and I believe that if Mr. Mattes were called would testify to
20 everything that I just said, as well as what's in his
21 declaration and with that, Your Honor, I would respectfully
22 request that the motion be approved.

23 THE COURT: Let me just ask you this. The Blue Bay
24 objection which is not being pressed, nonetheless has been read
25 and so, I am conscious of what argument was being presented last

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1 evening and I would like you to deal with it, even though it's
2 not being prosecuted right now because part of what I read was
3 these may be payments that are appropriate critical vendor
4 payments to make but this is the first day of the case. And
5 what's showing is there through your proffer from Mr. Mattes
6 that if this relief isn't granted today, that there will be the
7 kind of negative consequences you've described in your
8 presentation and I understand that small developers may go
9 elsewhere but they can also get an e-mail that says we're going
10 to pay you in three weeks. And that's true for the warehouse
11 and that's true even for AmEx because AmEx while tough, doesn't
12 generally close the operations of a cardholder down because of a
13 twenty-one day late payment. And we don't even know if the
14 payment's late yet.

15 And I don't know anything about Mr. Sawyer except he's
16 your number one unsecured creditor at 250,000 dollars --

17 MR. RICHMAN: And he --

18 THE COURT: -- and I assume that there's an ongoing
19 and close working relationship with him. I'm assuming without
20 knowing this to be true that he's a reasonably sophisticated
21 gentleman. I think there's a U.K. address but I am not
22 positive. And that Mr. Sawyer could be told look, we went to
23 the mat on the first day of the case but there's this
24 requirement that the law has imposed that there be adequate
25 notice at the beginning of bankruptcy cases when significant

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1 payments are leaving the company and even though we had the
2 money to pay you, you're going to have to wait a few weeks. I
3 hope you'll understand.

4 I guess my question is this; if such a rational
5 presentation were made to these various creditors, it's only
6 three weeks, gentlemen, be a little patient. You're still
7 getting money ahead of everybody else in the case. Why isn't
8 that sufficient? Why do we have to do this today? That's
9 effectively what the Blue Bay objection was addressing and
10 frankly, I think it's just something you need to meet in order
11 to get over that hurdle.

12 MR. RICHMAN: I appreciate the comments, Your Honor,
13 and I'm going to respond and then I would also like a minute to
14 talk with Mr. Mattes about this issue to see if there's
15 information that we should supplement.

16 THE COURT: Do you know what I think may make some
17 sense? Why don't we take a five minute break. We'll -- you can
18 stretch until say noon and come back right about -- at high
19 noon, how's that?

20 MR. RICHMAN: Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. PARTEE: Thank you, Your Honor.

23 (Court recessed at 11:53 a.m. until 12:03 p.m.)

24 THE COURT: Be seated, please.

25 MR. RICHMAN: Your Honor, thank you. The break was

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1 productive because I was able to review Your Honor's questions
2 with management and management believes that they can try to
3 work persuasively with Mr. Sawyer and try to persuade him to
4 waive the twenty-one days, so that there can be a longer notice
5 period and that we could request the relief be granted at that
6 time. And that cuts the relief we're seeking in half because he
7 was the largest payment on the list of about 250,000 dollars.

8 THE COURT: Right.

9 MR. RICHMAN: I want to offer Your Honor some
10 additional facts that would also be testified to that I learned
11 during the break about some of the other situations -- all the
12 other situations. Amex is tricky. It turns out it's just one
13 employee who has the card and it's in that employee's personal
14 name and the concern that management has expressed is the
15 difficulty of actually getting a decision maker at AmEx before
16 the bureaucracy just shuts you off. And then that employee is
17 on the hook for that amount and it reflects on his personal
18 credit and it also impairs the ability of the company to make a
19 number of payments and to keep the business going. So --

20 THE COURT: Do you know where you are in the billing
21 cycle for that particular account?

22 MR. RICHMAN: I believe it's overdue in about 40,000
23 dollars. Can somebody help me with that? Yes? And when is the
24 bill due?

25 UNIDENTIFIED SPEAKER: I do not recall. I do not know

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1 that.

2 MR. RICHMAN: Okay. But it's already one that's
3 overdue though; correct?

4 UNIDENTIFIED SPEAKER: It's overdue.

5 MR. RICHMAN: Yes, so that there is a roughly 40,000
6 bill that's already overdue.

7 THE COURT: If it's overdue, that bill should be paid.
8 The individual's credit rating should not be affected.

9 MR. RICHMAN: Thank you, Your Honor. In the case of
10 the warehouse Symram (ph.), they have already put a hold on
11 shipments, I am told by management. So, if the relief isn't
12 granted today to pay them their overdue amount, we would have to
13 bring a motion and bring other litigation against them which I
14 submit, Your Honor, on a cost-benefit basis given their secured
15 status, would be a waste of estate resources and on that basis,
16 I would renew my request that that payment be made.

17 THE COURT: I think that's distinguishable in part
18 because of the lien and so, I have no problem with what you've
19 just said.

20 MR. RICHMAN: Thank you, Your Honor. Lastly, we have
21 the four developers that I mentioned and I was told that three
22 of them are located abroad including one in Lithuania, which is
23 the principal developer for Roller Coaster Tycoon, which is one
24 of the most valuable game franchises.

25 And management reiterated to me and they would also

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1 testify that they made significant efforts to try to winnow down
2 their list of all game developers, there were roughly ten, to
3 those that they really felt created the greatest risk and they
4 have a sincere and good faith concern that these four are the
5 greatest risk of interrupting and some are right now working on
6 significant license amendments and improvements to games, so
7 that if there's an interruption and then one doesn't know if you
8 can get that person back, if they haven't gone somewhere else,
9 and even if you can get them back, the delay impairs the value
10 of the ongoing franchises.

11 So, Your Honor, I would request that with respect to
12 those four developers, that I would renew the request that those
13 payments be permitted to be made today.

14 THE COURT: I accept that representation and with the
15 understanding that the request for first day relief as to the
16 payment due to Mr. Sawyer has been withdrawn, the other requests
17 are granted.

18 MR. RICHMAN: Thank you, Your Honor. And what we'll
19 do with Mr. Sawyer is we'll make that part of -- I suppose we'll
20 file a new motion for payment after twenty-one days, so that the
21 record is clear.

22 THE COURT: I think you can simply carry that portion
23 of the motion to the next hearing date and I haven't done the
24 math but we were thinking that we could have a hearing on
25 February 14th at 10 a.m.

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1 MR. RICHMAN: That would work, Your Honor. Thank you.

2 MR. PARTEE: That's consistent with our schedule, Your
3 Honor, yes.

4 MR. RICHMAN: And it's also helpful to us to be able
5 to tell Mr. Sawyer that we have set that for a firm date, as
6 well. So, thank you.

7 THE COURT: And we can approve that payment at that
8 time and I am assuming that that will be a date well after the
9 appointment of the creditors committee.

10 MR. MORRISSEY: Your Honor, I expect that that is
11 correct.

12 THE COURT: Fine. That would also be a date for the
13 final DIP hearing and for any other matters that are being
14 carried forward.

15 MR. RICHMAN: Thank you, Your Honor. We're good with
16 that.

17 THE COURT: You could also conveniently use that as a
18 target date for your professional retentions.

19 MR. RICHMAN: Thank you, Your Honor. Before I move to
20 the next motion, just a small housekeeping matter. During the
21 break, I also learned that in the notice procedures motion that
22 we submitted and the order, we had proposed that the core list
23 -- the smallest notice list include Blue Bay and in light of the
24 fact that their claim has now been sold, we don't think we need
25 to add them to the core list any longer. So, I just wanted to

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1 make Your Honor aware of that and we'll take that out of the
2 order.

3 THE COURT: Fine.

4 MR. RICHMAN: Continuing with the agenda to item
5 number 8, Your Honor, is a motion to approve insurance premium
6 finance agreement and payment that needs to be made. As
7 explained in the Mattes' declaration at paragraphs 62 to 63, and
8 in the motion, the company has an arrangement with an outside
9 company called Premium Assignment Corporation where the Premium
10 Assignment Corporation takes care of their insurance premiums
11 and finances them under a financing agreement and the company
12 pays a monthly amount, so that helps the company's cash flow.
13 And the next payment is due January 31, I believe, in the motion
14 and if it's not paid, then the financing agreement can be
15 terminated and it's not executory, so we can't assume it and
16 compel performance with it. It covers workers compensation, so
17 it's a very important policy that we're legally required to
18 maintaining. So we would ask that that motion be approved, so
19 the premium can be paid.

20 THE COURT: Is there any problem with that, Mr.
21 Morrissey?

22 MR. MORRISSEY: No problem, Your Honor.

23 THE COURT: It's approved.

24 MR. RICHMAN: Thank you, Your Honor. The last agenda
25 motion apart from the interim DIP which the Court has already

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1 heard, is a motion to pay prepetition wages to employees and all
2 under the priority cap under the Bankruptcy Code.

3 What I want to emphasize to the Court on this is that
4 the employment base for Atari is relatively small. There are
5 only forty-seven full-time employees and one part-time employee
6 and just as the stability of the gaming platform and the
7 development flow into that platform is vitally important, we
8 also think that given the small size of the employment base
9 here, that we do not want to risk losing anybody in that
10 employment base at this critical time, particularly as we look
11 at the potential for a sale. Having people not going through a
12 revolving door, potentially interrupting other services could be
13 damaging to the company. And so, we're asking that only several
14 days' worth of unpaid but accrued wages and expenses be
15 reimbursed. This includes two independent contractors who work
16 virtually full-time at the company and are kind of like critical
17 vendors. One does product development and the other graphic
18 design, which are very key to the games.

19 Now we did discuss this with Mr. Morrissey who had a
20 concern about the expense component that we were asking about
21 and also asked about payments to insiders and this motion does
22 include payments to officers of the company, again under the
23 cap. So, I want to be clear about that on the record. But Mr.
24 Morrissey did request that we make this an interim order such
25 that all the payments that we've requested could be paid today

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1 but it would be subject to final approval in the event that the
2 trustee or committee or anybody else wants to have a closer look
3 at any of the numbers, including the expense numbers and we're
4 certainly prepared to discuss that with anybody who requests it
5 and come back at the final hearing if there's a need to do that.

6 So I would request respectfully, Your Honor, that this
7 be approved on an interim basis, so payments can be made
8 immediately in accordance with the motion but that we also set
9 it for final hearing.

10 THE COURT: It's approved on an interim basis and
11 we'll hear it finally on February 14th.

12 MR. RICHMAN: Thank you, Your Honor. With that, I
13 believe we've concluded the agenda and unless Your Honor --

14 THE COURT: One question, I noticed that there was an
15 application to formally retain your claims agent. I would have
16 expected it to be on this morning's agenda. Was that an
17 oversight or do you intend to simply heard at the same time that
18 other professional retentions will be heard?

19 MR. RICHMAN: We intended it to be heard with the
20 other professional applications as part of a second day agenda.

21 THE COURT: Okay. Fine. I guess with that, we're
22 done. Thank you. I'll see you next time.

23 ALL COUNSEL: Thank you, Your Honor.

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CERTIFICATION

I, Linda Ferrara, certify that the foregoing is a
correct transcript from the official electronic sound recording
of the proceedings in the above-entitled matter.

Dated: January 25, 2013

A handwritten signature in cursive script that reads "Linda Ferrara". The signature is written in dark ink and is positioned above a horizontal line.

Signature of Approved Transcriber